

1 HONORABLE RICHARD A. JONES
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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 UNITED STATES OF AMERICA,

12 Plaintiff,

v.

13 BERNARD ROSS HANSEN, and
14 DIANE RENEE ERDMANN,

15 Defendants.

Case No. CR 18-0092-RAJ

REPLY IN SUPPORT OF DEFENDANT
BERNARD ROSS HANSEN'S MOTION
TO CONTINUE TRIAL AND
PRETRIAL DATES

Note on Motions Calendar:
February 7, 2020

16 Mr. Hansen's newly appointed counsel must be provided sufficient time to prepare for a
17 trial in what can only be described as an extraordinarily complex case. There is nothing in the
18 Speedy Trial Act saying that new counsel's need to effectively prepare is of lesser importance
19 than that of a defense lawyer who appeared at the commencement of a case. Indeed, to interpret
20 the Speedy Trial Act otherwise—as the government appears to by emphasizing the interests of
21 those other than the defendant—would itself violate a defendant's Sixth Amendment rights. *See*
22 *United States v. Sutcliffe*, 505 F.3d 944, 957 (9th Cir. 2007) (finding that the “district court acted
23 entirely appropriately in allowing Defendant’s substituted counsel time to prepare for trial” and
24 explaining that “Defendant’s defense would clearly have been prejudiced” otherwise).

25 REPLY IN SUPPORT OF BERNARD ROSS
HANSEN'S MOTION TO CONTINUE TRIAL
AND PRETRIAL DATES
(Case No. CR 18-0092-RAJ) - 1

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1 According to the Federal Public Defender's office, with whom Mr. Hansen's new counsel
 2 met on the day he filed his motion to continue, the complexity of this case is unprecedented in
 3 this District. Given the millions of pages of discovery to review, the scores of witnesses to
 4 prepare for, the scope of the needed defense investigation, the multi-year nature of the alleged
 5 conspiracy, and the varying allegations in the indictment of what constituted the fraud, this
 6 characterization can hardly be disputed. As is certainly the experience of this Court and of other
 7 criminal defense practitioners in this District who defend criminal fraud cases, it would be
 8 routine to continue a trial of this nature at least one year had this case just been indicted and had
 9 new counsel just made an appearance.

10 In its opposition, the government suggests that the current trial date—less than three
 11 months away—should remain in place. It is evident that the frustration of the government and
 12 those affected by the allegations in the indictment has led the prosecutors to take a patently
 13 unreasonable position. There is simply no way that competent counsel—even if that counsel
 14 had no other matters to handle—could possibly be prepared to defend Mr. Hansen at trial in that
 15 time frame. Respectfully, the government's “no continuance” position seems more like
 16 brinksmanship to bargain for a shorter trial continuance than a true assessment of what is fair to
 17 Mr. Hansen or his new counsel.¹

18 The government's brief does not prove that any prejudice will result from the delay
 19 requested by Mr. Hansen. The government makes vague references to witness' memory fading,
 20 but even the government does not contend, nor could it reasonably contend, that the delay
 21 requested by Mr. Hansen will have a material impact on its ability to successfully prosecute this

22 ¹ Government counsel suggests in a footnote that it would be possible for new counsel to try this case in October
 23 2019. That is not possible. Not only is an October date insufficient to permit for adequate trial preparation in this
 24 case (for all the reasons set forth in our opening brief), but it would also require the Court to reject a stipulated
 25 motion for a continuance in *United States v. Seattle Barrel, et al.*, No. 2:19-cr-00258-RAJ, negotiated by Mr. Calfo
 with the U.S. Attorney's Office weeks ago. It would be a disservice to Mr. Calfo's previously retained client in the
Seattle Barrel matter to lose his preferred trial date, to which the U.S. Attorney's Office agreed, in favor of a later-
 appointed client because of the position of a different lawyer in the U.S. Attorney's Office.

1 case. Rather than showing true prejudice, the government proves up the frustration of former
 2 customers who would like to see Mr. Hansen go to jail as soon as possible. While the frustration
 3 caused by the delays in this case is reasonable, the desire to see Mr. Hansen go without competent
 4 or fully prepared trial counsel is not.

5 Mr. Hansen's counsel would like to fulfill his commitment to the CJA panel by handling
 6 this case, particularly because the subject matter fits well with his background and experience in
 7 both prosecuting and defending these types of cases. If, as counsel respectfully submits, he
 8 would likely have received a year or more to prepare for a trial of this nature (e.g., to April 2021)
 9 had he appeared right after indictment, the additional three to four months necessitated by
 10 counsel's existing trial schedule will not materially or adversely impact any stakeholder to this
 11 prosecution. That said, should the Court believe that counsel should not have accepted this
 12 appointment given his current trial schedule, it goes without saying that the Court has the option
 13 to appoint different counsel and allow undersigned defense counsel to withdraw. There is an
 14 irony in the government's position in this regard: The government voices concern over the
 15 multiple changes of counsel and its solution to the current situation is for the Court to require
 16 current counsel to withdraw and new counsel to be appointed. Of course, new counsel might
 17 seek a similar continuance after being appointed and appreciating the extraordinary complexity
 18 of this case.

19 For the foregoing reasons, and those in Mr. Hansen's opening brief, Mr. Hansen
 20 respectfully requests the Court to continue the trial date in this matter to late July 2021.
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The government has requested a status conference to discuss the issues raised by this motion for a continuance and Mr. Hansen has no objection to that request.

DATED this 4th day of February, 2020.

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